

2000

Legislative approaches to the regulation of racial hatred: a study of racial vilification laws in Australia, 1989-1999

Luke McNamara
University of Wollongong

Follow this and additional works at: <https://ro.uow.edu.au/theses>

University of Wollongong

Copyright Warning

You may print or download ONE copy of this document for the purpose of your own research or study. The University does not authorise you to copy, communicate or otherwise make available electronically to any other person any copyright material contained on this site.

You are reminded of the following: This work is copyright. Apart from any use permitted under the Copyright Act 1968, no part of this work may be reproduced by any process, nor may any other exclusive right be exercised, without the permission of the author. Copyright owners are entitled to take legal action against persons who infringe their copyright. A reproduction of material that is protected by copyright may be a copyright infringement. A court may impose penalties and award damages in relation to offences and infringements relating to copyright material.

Higher penalties may apply, and higher damages may be awarded, for offences and infringements involving the conversion of material into digital or electronic form.

Unless otherwise indicated, the views expressed in this thesis are those of the author and do not necessarily represent the views of the University of Wollongong.

Recommended Citation

McNamara, Luke, Legislative approaches to the regulation of racial hatred: a study of racial vilification laws in Australia, 1989-1999, Doctor of Philosophy thesis, Faculty of Law, University of Wollongong, 2000. <https://ro.uow.edu.au/theses/1857>

NOTE

This online version of the thesis may have different page formatting and pagination from the paper copy held in the University of Wollongong Library.

UNIVERSITY OF WOLLONGONG

COPYRIGHT WARNING

You may print or download ONE copy of this document for the purpose of your own research or study. The University does not authorise you to copy, communicate or otherwise make available electronically to any other person any copyright material contained on this site. You are reminded of the following:

Copyright owners are entitled to take legal action against persons who infringe their copyright. A reproduction of material that is protected by copyright may be a copyright infringement. A court may impose penalties and award damages in relation to offences and infringements relating to copyright material. Higher penalties may apply, and higher damages may be awarded, for offences and infringements involving the conversion of material into digital or electronic form.

**LEGISLATIVE APPROACHES TO THE REGULATION
OF RACIAL HATRED: A STUDY OF RACIAL
VILIFICATION LAWS IN AUSTRALIA, 1989-1999**

**A thesis submitted in fulfilment of the requirements for the award
of the degree**

DOCTOR OF PHILOSOPHY

from

UNIVERSITY OF WOLLONGONG

by

LUKE McNAMARA, BA, LLB, LLM

FACULTY OF LAW

2000

Thesis Declaration

This is to certify that I, Luke McNamara, being a candidate for the degree of Doctor of Philosophy, am fully aware of the University of Wollongong’s rules and procedures relating to the preparation, submission, retention and use of higher degree theses, and its policy on intellectual property. I acknowledge that the University requires the thesis to be retained in the Library for record purposes and that within copyright privileges of the author, it should be accessible for consultation and copying at the discretion of the Library officer in charge and in accordance with the Copyright Act (1968).

I certify that this thesis has not been submitted for a degree to any other university or institution.

I authorise the University of Wollongong to publish an abstract of this thesis.

Signature✓.....

Date

VOLUME ONE

CONTENTS

VOLUME ONE

Contents i

Abstract..... iii

Acknowledgements..... iv

PART I

Chapter 1: General Introduction 1

Chapter 2: The Nature and Extent of Racial Vilification in Australia..... 33

Chapter 3: Motivations for the Legislative Regulation of Racial Vilification 50

Chapter 4: Framework for the Analysis of Racial Vilification Laws 63

PART II – NATIONAL LEGISLATION

Chapter 5: Part IIA of the *Racial Discrimination Act* 1975 (Cth)

 — The Nature of the Regulatory Approach..... 67

Chapter 6: Part IIA of the *Racial Discrimination Act* 1975 (Cth)

 — Operation..... 113

PART III – STATE/TERRITORIAL LEGISLATION

Chapter 7: Introduction to State/Territorial Legislation..... 185

Chapter 8: Part 2 Division 3A of the *Anti-Discrimination Act* 1977 (NSW)

 — The Nature of the Regulatory Approach..... 194

VOLUME TWO

PART III – STATE/TERRITORIAL LEGISLATION (cont.)

Chapter 9: Part 2 Division 3A of the <i>Anti-Discrimination Act</i> 1977 (NSW)	
— Operation.....	243
Chapter 10: Chapter XI of the <i>Criminal Code</i> 1913 (WA)	
— The Nature and Operation of the Regulatory Approach.....	343
Chapter 11: The <i>Racial Vilification Act</i> 1996 (SA)	
— The Nature and Operation of the Regulatory Approach.....	405

PART IV

Chapter 12: Summary and General Conclusions.....	464
Bibliography.....	474

ABSTRACT

This thesis examines the range of models of legal regulation which have been adopted in Australia to deal with various forms of racial vilification—including criminalisation, civil liability via the creation of statutory torts, and civil liability via the human rights dispute resolution system. It reviews the history and current operation of all relevant federal, state and territorial laws, via an examination of relevant reports, legislation, parliamentary debates, statistical data, and judicial and quasi-judicial decisions, as well as secondary literature.

The factors which have influenced the choice of different legislative models for the regulation of racial vilification are identified, and the implications of the choices that have been made for the level of protection provided for victims of racial vilification are discussed. In particular, this thesis analyses the impact of free speech ‘rights’ and values on the initial choice and subsequent modification of regulatory models by legislatures, and on the application and interpretation of relevant legislation by human rights agencies, prosecuting authorities, tribunals and courts. The capacity of existing regulatory models to achieve the underlying objectives of racial vilification laws in a democratic multicultural society are examined, including an assessment of the strengths and weaknesses of the various approaches to the regulation of racial vilification which have been utilised to date in Australia.

ACKNOWLEDGEMENTS

I am grateful to the many organisations and individuals who generously responded to my requests for information. Special thanks to the Anti-Discrimination Board of New South Wales and Monica McNamara.

Thanks to Professor Martin Tsamenyi, for great supervision, and to my colleagues at the Faculty of Law, University of Wollongong, for support and encouragement.

The biggest thank you, as usual, goes to Karen. You've been leap-frogged in the queue for a dedication, but you deserve the lion's share of my gratitude. Recording that you expertly proof read 500 pages of text offers only a glimpse of the part you've played in allowing me to complete this thesis.

This "book" is for Josie.

(Sorry there are no pictures — I'll try to fit some into the next one!)